

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FLINT et al.	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 02-1350
A.P. DESANNO & SONS et al.	:	

**MEMORANDUM AND ORDER**

Plaintiffs' Complaint seeks damages and other relief arising out of their purchase of land and buildings in Phoenixville, Pennsylvania due to contamination, which allegedly occurred when Defendants owned the land and buildings. Plaintiffs seek recovery in Count I for violation of the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. § 6020.101 *et.seq.*, Count II for strict liability for ultra-hazardous activity, Count III for negligence, Count IV for breach of contract, and Count V for fraudulent misrepresentation.

Defendants move to dismiss Counts I - IV pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, for a more definite statement pursuant to Rule 12(e).

A related case is pending between the same parties in the Court of Common Pleas in Chester County, Pennsylvania, No. 01-10526. In that case, Judge William P. Mahon issued an Order dated June 17, 2002, which sustained certain of the Defendants' Preliminary Objections. Specifically, Judge Mahon sustained Defendants' Preliminary Objection to Count II of the state court Complaint, alleging strict liability for abnormally dangerous activities, pursuant to § 519 of the Restatement (2<sup>nd</sup>) of Torts. Based on this ruling, Plaintiffs' counsel has advised that Plaintiffs are willing to withdraw Count II of the Complaint in this case.

After review of the remaining Counts of Plaintiffs' Complaint, the Court finds that they satisfy the minimal standards of notice pleading, as allowed by Rule 8(a), Federal Rules of Civil Procedure.

Although the facts are not presently sufficient in the record to decide, Plaintiffs, in filing this lawsuit subsequent to the Chester County suit, may have run afoul of the so-called "first filed rule", *see generally E.E.O.C. v. University of Pennsylvania*, 850 F. 2d 969 (3d Cir. 1988), *aff'd*, 493 U.S. 182 (1990). Accordingly, the Court includes in its Order a direction that the parties shall submit memoranda setting forth their positions concerning the first filed rule.

Accordingly, it is hereby ORDERED that the Defendants' Motion to Dismiss Count II of the Complaint is GRANTED, that Defendants' Motion to Dismiss Counts I, III and IV is DENIED, and that Defendants' alternative Motion to Require a More Definite Statement is DENIED. Defendants shall answer the Complaint within ten (10) days.

Plaintiffs shall file a Memorandum within ten days as to whether their filing this case impacts the "first filed" rule. Defendants shall respond within ten days thereafter.

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MICHAEL M. BAYLSON, U.S.D.J.